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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/409,330 | 09/30/1999 | JASON T. CASSEZZA | INTL-0268-US | 5219 |

21906 7590 06/14/2006

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| EXAMINER |
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LUU, SY D

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| ART UNIT | PAPER NUMBER |
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2174

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/409,330 | CASSEZZA, JASON T. | |
| | Examiner | Art Unit | |
| | Sy D. Luu | 2174 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/5/2005 and prior.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the Decision On Appeal sent on May 30, 2006, PROSECUTION IS HEREBY REOPENED. Claims 27-34 are cancelled in accordance to the affirmation by the Decision On Appeal. As per claims 35-38, which were reversed by the Decision On Appeal, a new ground of rejection is made in view of Konstantinou et al. as set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. Claims 35-38 are pending in this application. Claim 35 is the sole independent claim. This action is made Final.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

4. Claims 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (US 5,191,620) in view of Konstantinou et al. ("Konstantinou", US 6,584,201 B1).

As per claims 35 and 38, Lee teaches a system comprising: a processor (fig. 1; MICOM 3); a storage coupled to said processor (col. 2, lines 57-59); a sound generating circuit coupled to said processor, and software stored on said storage to control the sound generated by said circuit to produce a plurality of sounds of progressively changing/increasing audio level (figs 3A-3A'; col. 2, lines 15 et seq.); and a remote control unit to receive user inputs to provide information about a user selected sound to said processor (fig. 2, *transmitter 1*). Lee does not teach the remote control unit to receive sound generated by said sound generating circuit. Konstantinou teaches an automatic remote control device, in which microphones and circuitry associated with the volume control apparatus are located therein (abstract). It would have been obvious to an artisan at the time of the invention to combine Konstantinou's teaching with Lee's remote control unit in order to provide a convenient and accurate measurement means for automatically adjusting sound volume according to user's preference given that the remote control unit being usually located next to the user.

As per claim 36, Lee teaches said software to correlate the time period when a user selection is received to a volume of the sound being generated at the time the user selection was received (fig. 2; *step 19*) and recording that volume level as a preset sound level (fig. 2; *steps 14 and 17*; col. 2, lines 30 et seq.).

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5. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (US 5,191,620) and Konstantinou et al. ("Konstantinou", US 6,584,201 B1) in view of Davidson (US 5,778,077).

As per claim 37, the system of Lee and Konstantinou does not expressly teach the step of comparing an audio volume level produced by said system to the preset sound level. This is what Davidson teaches in a method for controlling volume levels in an audio device (col. 4, lines 58-61; col. 5, lines 16-30; adjusting the volume up/down towards the preset lower/upper limits when the level exceeds the limits). It would have been obvious to an artisan at the time of the invention to combine Davidson's teaching with Lee's method in order to further enhance Lee's method with a means for automatically adjust the volume within a certain preset range of desired volume.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Inquires

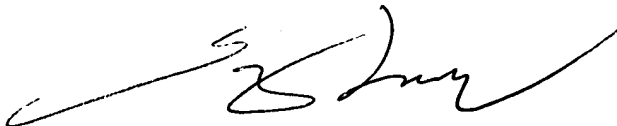
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sy Luu whose telephone number is (571) 272-4064. The examiner can normally be reached on Monday - Friday from 7:300 am to 4:00 pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid, can be reached on (571) 272-4063.

The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**SY D. LUU
PRIMARY EXAMINER
ART UNIT 2174**